

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

<hr/>)	
Comments Sought on Competitive Bidding)	
Procedures for Auction 902 and Certain)	
Program Requirements)	AU Docket No. 13-53
)	
<hr/>)	

COMMENTS OF COMMNET WIRELESS, LLC

Michael Lazarus
Jessica DeSimone
Telecommunications Law Professionals
PLLC
875 15th Street, NW, Suite 750
Washington, DC 20005
Telephone: (202) 789-3120
Facsimile: (202) 789-3112

Its Attorneys

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	POPULATION-BASED CENSUS BLOCKS ARE THE MOST ACCURATE METHOD TO DETERMINE GEOGRAPHICAL ELIGIBILITY.....	3
III.	SINGLE ROUND BIDDING, RATHER THAN MULTIPLE ROUND BIDDING, IS MOST EFFICIENT IN AN AUCTION OF THIS SIZE AND TYPE	5
IV.	CERTAIN ASPECTS OF POST-AUCTION PROCEDURES SHOULD BE REVISED TO ELIMINATE SUBSTANTIAL BURDENS ON PARTICIPANTS	6
V.	CARRIERS SHOULD BE ALLOWED TO DEMONSTRATE THEIR COMPLIANCE WITH PUBLIC INTEREST OBLIGATIONS THROUGH METHODS OTHER THAN DRIVE TESTING	9
VI.	CONCLUSION	11

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

)	
Comments Sought on Competitive Bidding)	
Procedures for Auction 902 and Certain)	
Program Requirements)	AU Docket No. 13-53
)	
)	

COMMENTS OF COMMNET WIRELESS, LLC

Commnet Wireless, LLC (“Commnet”),¹ by its attorneys, submits its comments in response to the *Public Notice* released by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceeding, in which the Commission seeks comment on a number of issues relating to the competitive bidding procedures and certain related programmatic issues for Auction 902.²

I. INTRODUCTION AND SUMMARY

Commnet is a telecommunications company that provides wireless broadband and voice services to underserved markets primarily in the west and southwest regions of the United States. Commnet serves some of the most rural markets in the country including several Tribal reservations.

Commnet’s Tribal resume includes a National Telecommunications & Information Administration (“NTIA”) American Recovery and Reinvestment Act (“ARRA”) grant in

¹ Commnet Wireless, LLC is a subsidiary of Atlantic Tele-Network, Inc. (“ATN”).

² *Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013; Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements*, AU Docket No. 13-53, Public Notice (rel. Mar. 29, 2013) (“*Public Notice*”).

partnership with the Navajo Tribal Utility Authority (“NTUA”).³ That project is building a combined fiber and wireless broadband system on the parts of the Navajo Nation, which is the largest land mass Tribal reservation in the 48 states. Commnet also has constructed networks involving several members of the National Tribal Telecommunications Association (“NTTA”) including San Carlos Apache Telecommunications Utility Inc. (“SCATUI”), Tohono-O’odham Utility Authority (“TOUA”), and Mescalero Apache Telecom Inc. (“MATI”). Several of Commnet’s smaller projects, including facilities on the Nations of the Havasupai, Walker River Piute, various Pueblos in northern New Mexico, and Alamo Bend Satellite Chapter, provide the only wireless broadband coverage in these areas.

In addition to Commnet’s relationship with Tribal Nations, Commnet successfully participated in Auction 901, which provides additional insight into the issues presented in the *Public Notice*. In Auction 901, Commnet Four Corners, LLC was assigned support totaling \$649,992.39⁴ and Commnet of Nevada, LLC was assigned support totaling \$21,060,477.75.⁵

The comments offered below closely follow comments previously submitted by Commnet’s parent company, ATN,⁶ and reflect ATN and its subsidiaries’ experience in and commitment to providing broadband services to unserved areas of the United States, including Tribal areas. Commnet urges the FCC to adopt eligibility and procedural rules that favor simplicity and certainty. Such an approach will enable participation in Auction 902 by entities

³ NTUA Wireless, the ARRA grantee, is majority-owned by NTUA, an enterprise of the Navajo Nation, and minority-owned by Commnet Wireless, LLC. Commnet is a sub-grantee in the project.

⁴ *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice, DA 12-1566, Appendix A (rel. Oct. 3, 2012) (“*Auction 901 Winning Bidders Notice*”) (FRN 0009572884).

⁵ *Id.* (FRN 0018122879).

⁶ *See generally* Comments of Atlantic Tele-Network, Inc., in WC Docket No. 10-90; WT Docket No. 10-208 (filed Dec. 21, 2012).

best suited to offer service in the uniquely challenging environment of Tribal lands. Commnet supports the FCC's proposed use of population-based census blocks to determine eligibility for Auction 902. A population-based metric using census blocks will provide a more targeted approach to identifying unserved areas and will help ensure that funds are being deployed in the most efficient way possible. In addition, the Commission should adopt single round bidding for Auction 902, similar to its Auction 901 procedures. Auction 901 was successful with respect to fund allocation in that all funds were allocated in a quick and efficient manner. The Commission should again follow this format.

Commnet also recommends that the Commission adjust certain auction application procedures for Auction 902, including providing additional guidance and time for long-form applications, and an adjustment of the current restriction on certain consolidated filings. For many small carriers with limited resources, several of the processes utilized in Auction 901, including preparing a long-form application on short notice and being required to file individual attachments and obtain letters of credit for each bid – sometimes in the hundreds – proved to be challenging during Auction 901, and should be revised for Auction 902. Finally, Commnet requests that the Commission adopt an efficient and accurate method to allow carriers to demonstrate compliance with any population-based coverage requirement.

II. POPULATION-BASED CENSUS BLOCKS ARE THE MOST ACCURATE METHOD TO DETERMINE GEOGRAPHICAL ELIGIBILITY

Commnet supports the Commission's proposal to use census block units, rather than census tracts, to identify areas that are not covered by current or next generation mobile networks.⁷ Census blocks are the smallest geographic units available and, as the Commission

⁷ See *Public Notice*, ¶¶ 17-21.

has found, “should provide a detailed picture of the availability of 3G mobile services.”⁸ Using census blocks will ensure the efficient deployment of funds to Tribal lands because these smaller units will provide a more targeted approach to identifying unserved areas. Tribal Mobility Fund recipients will be able to identify and build appropriate infrastructure based on a more accurate depiction of the areas, which will decrease the risk of overbuilding or expending funds on unnecessary – and quite possibly – redundant infrastructure. The Commission has recognized the lack of basic infrastructure in many Tribal communities and aims to “promot[e] the development of telecommunications infrastructure on Tribal lands.”⁹ Census blocks, rather than tracts, will pinpoint the areas that are truly unserved, and ensure the efficient use of funds in order to promote these goals.

Commnet also supports the Commission’s decision to use population as the basis for calculating the number of units in each eligible census block.¹⁰ As the Commission has acknowledged, “mobile wireless deployment to date on Tribal lands has largely centered along major highways, and has, unlike other rural deployments, ignored population centers and community anchor institutions.”¹¹ A population-based metric will stimulate deployment strategies that break that trend and focus on serving the actual individuals who need the service – individuals who cannot accurately be measured by road miles. A “road miles” metric is especially challenging in Tribal areas where the population is widely dispersed because covering a road mile would not necessarily result in service to unserved populations. In addition, some Tribal areas do not have roads or have few easily-passable roads. Therefore, using population to

⁸ *Mobility Fund NPRM*, ¶ 21.

⁹ *ICC/USF Transformation Order*, ¶ 483.

¹⁰ *See Public Notice*, ¶ 23.

¹¹ *ICC/USF Transformation Order*, ¶ 488.

determine the level of coverage is more appropriate, will create an accurate representation of unserved areas in Tribal lands, and will result in Tribal Mobility funds being spent where they are needed most.

III. SINGLE ROUND BIDDING, RATHER THAN MULTIPLE ROUND BIDDING, IS MOST EFFICIENT IN AN AUCTION OF THIS SIZE AND TYPE

Commnet believes that a single round, sealed-bid approach would be most appropriate for the Tribal Mobility Fund. A single round auction, as the Commission has stated, has an advantage of being “simple and quick.”¹² Where there is a relatively small pool of funds and likely to be a similarly small pool of participants, a single round process is most efficient for the Commission and participants.

In Auction 901, which used single round bidding, all available funds were successfully allocated in a quick and efficient manner. This was due in part to the Commission recognizing that “circumstances favoring a multiple round auction – i.e., when there are strong interactions among items and when bidders are unsure as to the market value of the item” were not, in the case of Auction 901, significant enough “to outweigh the concerns about complexity it would add to the auction.”¹³

The same reasoning holds true for Auction 902. In fact, the reasons for a single round auction are more compelling for this Auction due to the smaller size of the Tribal Mobility Fund -- one-sixth the amount of the first Mobility Fund auction -- and the Commission should conclude that single round bidding is appropriate for all auctions of this scope. Using multiple

¹² *Public Notice*, ¶ 28.

¹³ *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, DA 12-641, ¶ 129 (rel. May 2, 2012) (“*Auction 901 Public Notice*”).

round bidding would attach significant burdens to this Auction, such as increased administrative needs and costs, and a more complex process overall. Such a process is unnecessary for the Tribal census blocks because bidders are not “unsure” of the current market value, nor will there be “strong interactions” among these items.¹⁴ In fact, due to the unique needs of the geographic areas and populations involved in this Auction, participants, like Commnet, are likely already familiar with the census blocks and their value as a result of providing service nearby or in similar areas. As a result, the ability to submit an accurate single bid is increased.

Consequently, in Auction 902, bidders will not “need to know or have the opportunity to react to the bids of others as would be possible in a multiple round format.”¹⁵ Furthermore, multiple round bidding entails costs in terms of time and personnel to participate that may prevent smaller and rural carriers that do not have significant resources to handle these additional burdens.

Where there is a limited pool of one-time funds being allocated, as in Auction 901 and 902, multiple round bidding would inject a level of complexity that is unnecessary. The Commission should remain consistent in its approach and implement a single round auction for the Tribal Mobility Fund.

IV. CERTAIN ASPECTS OF POST-AUCTION PROCEDURES SHOULD BE REVISED TO ELIMINATE SUBSTANTIAL BURDENS ON PARTICIPANTS

In order to ensure that the funds being provided through the Tribal Mobility Fund are directly provided to the areas that need them most, Commnet strongly urges the Commission to

¹⁴ See *Auction 901 Public Notice*, ¶ 129.

¹⁵ *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements*, AU Docket No. 12-25, Public Notice, DA 12-121, ¶ 26 (rel. Feb. 2, 2012).

revise certain proposed aspects of the Tribal Mobility Fund post-auction procedures.¹⁶ First, Commnet requests that the Commission provide additional time, as well as clarifying guidelines for applicants concerning the long-form application (FCC Form 680). During Mobility Fund Phase I, the Commission announced the winning bidders and the post-auction procedures on October 3, 2012, and required that the forms be submitted less than a month later, on November 1, 2012.¹⁷ Commnet found that meeting this short timeframe for filing its long-form application without any previous guidance was extremely challenging. Moreover, certain requirements for the application, such as obtaining separate letters of credit or commitment letters for each winning bid, required carriers to conduct due diligence, negotiate, and engage in financial transactions that required substantial time and resources. Commnet respectfully requests that the Commission consider the challenges faced by small carriers when designing the timeframe and related requirements for the post-auction procedures, as well as accompanying guidelines to aid applicants of the Tribal Mobility Fund. This extension will not only allow carriers to be better prepared for the long-form filing once the Auction winners are announced, but it could also potentially decrease the time between the announcement of winning bidders and actual

¹⁶ In addition to direct Commission action, Commnet and ATN have previously requested that any Mobility Fund support must be classified as a “capital resource” to ensure that funds are not diverted due to tax consequences. (*See* Comments of Atlantic Tele-Network, Inc., in WC Docket No. 10-90; WT Docket No. 10-208, 14-15 (filed Dec. 21, 2012)). Such a classification would ensure that all distributed funds are able to go directly to their intended purpose: “supporting mobile broadband services in areas where such services cannot be sustained or extended without ongoing support.” (*USF/ICC Transformation FNPRM*, ¶ 1122). Commnet therefore requests that the Commission take the appropriate steps with the Internal Revenue Service (“IRS”) to designate Tribal Mobility Fund support as capital recovery instead of classifying the support as revenue for tax treatment purposes.

¹⁷ This deadline was extended four days to Monday, November 5, due to the disruption caused by Hurricane Sandy, with the extension notice being released on October 31, the day before the original deadline. *Mobility Fund Phase I Auction Long-Form Application Deadline Extended*, AU Docket No. 12-25, Public Notice (rel. Oct. 31, 2012); *see also Auction 901 Winning Bidders Notice*, ¶ 6.

disbursements due to consultations between entities and Commission staff concerning pending long-form applications.

The short timeframe to complete and submit long-form applications might be more acceptable if the Commission reduces the burdens imposed by certain Mobility Fund rules that had the effect of diverting the attention and resources of winning bidders. In fact, these requirements pose the risk of also diverting funds from broadband deployment to largely unnecessary or redundant administrative costs and burdens. Specifically, Commnet requests that the Commission reconsider its requirement that winning bidders submit certain information with respect to each of its multiple bids in separate attachments to a single long-form application.¹⁸ In the event that a winning bidder had numerous bids – sometimes hundreds of bids – providing the Commission with individual attachments per bid consumed substantial time and resources. This burden was especially apparent with respect to obtaining letters of credit and commitment letters. For instance, Commnet’s parent company, ATN, and its subsidiaries (including Commnet), collectively won 120 bids in Auction 901. Obtaining a separate commitment letter for each of the 120 bids that the ATN companies collectively won was an expensive and time-consuming process, one that could have potentially been avoided had ATN been permitted to submit one letter of credit per winning bidder rather than one letter of credit per winning bid. Each letter of credit requires a separate fee and specific resources to be expended.¹⁹ Furthermore, some

¹⁸ *Auction 901 Winning Bidders Notice*, ¶ 14.

¹⁹ While ATN and its subsidiaries were fortunate to have an existing facility with sufficiently available credit, had this not been the case, it would have been difficult to put a facility in place in the short time frame between the announcement of winning bids and submission of final applications. While participants could put a credit facility in place before the auction begins, it is unlikely that carriers would incur the financial or administrative expense until there is the certainty of a winning bid. This time and expense can be a critical issue for carriers that *do* find themselves in a situation where they do not have a bank or available credit – especially small,
(continued...)

Auction 901 winners found that the banks they ordinarily use to issue letters of credit were, under the Commission's rules, deemed ineligible – forcing carriers to find new banking institutions solely for this purpose – again, expending significant funds and time to do so.²⁰

These fees and resources would be much better spent on the Commission's main goal: broadband deployment. This requirement weighs heavily on small carriers such as Commnet, and as a result, Commnet urges the Commission to take a more flexible view of this requirement, such as by requiring one letter of credit per winning bidder, rather than per winning bid, and generally permitting consolidated filings wherever possible. This revision will increase the simplicity of the process and avoid the necessary diversion of resources to the benefit of both the applicants and the Commission.

V. CARRIERS SHOULD BE ALLOWED TO DEMONSTRATE THEIR COMPLIANCE WITH PUBLIC INTEREST OBLIGATIONS THROUGH METHODS OTHER THAN DRIVE TESTING

The Commission has proposed to measure the performance of Tribal Mobility Fund recipients through population coverage.²¹ While Commnet supports this proposal, Commnet (...continued)

rural and mid-tier carriers – and is a problem that the Commission should address before it implements further Mobility Fund auctions.

²⁰ Although ATN had an existing facility in place, it was with CoBank, a lender that was not on the list of eligible banking institutions despite its vast size and experience lending in these situations. This issue forced ATN to use another bank in connection with Auction 901, which unnecessarily expended additional funds and resources. Thus, although the Commission identified the eligibility criteria for qualifying banks, the Commission should consider a broader definition of the types of entities that are eligible as a “qualifying bank” for purposes of the Letter of Credit requirements and allow carriers to use reputable banks of their choice that may not fit the definition under a narrow interpretation of the rules, but under a proper showing, fit the general description and allow for the same end result. Having a limited definition, as is currently the case, imposes significant burdens and depletes the resources of smaller, rural, and mid-tier carriers. *See* 47 C.F.R. § 54.1007; *In the Matter of Mobility Fund Phase I Waiver of Section 54.1007(a)(1) of the Commission's Rules*, WC Docket No. 10-90, WT Docket No. 10-208, AU Docket No. 12-25, Order (rel. Nov. 1, 2012) (The Commission waived the bank requirements of Section 54.1007(a)(1)(i)(B) on its own motion to allow the use of CoBank, noting that multiple requests were made from Auction 901 winning bidders to use this bank).

also cautions the Commission that the method to determine population coverage must be efficient, available at a low cost for small carriers, and overall, must be accurate. The Commission has identified challenges associated with this approach and should review the record, and, if necessary, seek further expedited comment on an appropriate method. Some questions that the Commission should consider and seek targeted comment on are what assumptions – if any – need to be made to determine population coverage, and how fund recipients will prove coverage after the fact.²² It is critical that carriers have an efficient, accurate method to demonstrate that they are complying with population coverage requirements.

The Commission has indicated that even if it does use a population-metric to determine coverage, it may still require drive testing to demonstrate coverage supported by Tribal Mobility Fund Phase I. Commnet disagrees. In connection with Mobility Fund Phase I, Commnet has found that many of the roads in the eligible census blocks contained conditions that hindered, if not prevented, drive testing.²³ The road miles in some eligible census blocks may contain logging roads and private access roads that, while in need of improved mobile service, are not necessarily accessible for drive testing purposes. For example, in the winter months, many of these roads become inaccessible due to weather conditions, and may only become accessible when the snow melts or a private individual clears the roads. Until that point, however, vehicles with drive test gear (generally a truck or a car) cannot access these areas. As a consequence, an alternate method of coverage testing should be permitted.

(...continued)

²¹ *Public Notice*, ¶ 10.

²² *See id.* at ¶ 36.

²³ The Commission requires that “part[ies] demonstrate that they have deployed a network that covers the relevant area and meets their public interest obligations with data from drive tests.” *USF/ICC Transformation Order*, ¶ 370.

VI. CONCLUSION

Commnet urges the Commission to consider the above comments, as many are based upon the results and real-life experiences of Auction 901 and Commnet's experience serving Tribal lands. The modifications proposed by Commnet will ensure that the Tribal Mobility funds are used to their full potential. Specifically, the Commission should use population-based census blocks to identify areas that are not covered by current or next generation networks. Moreover, with respect to the auction format, Commnet believes that a single round auction would be most appropriate in the context of the Tribal Mobility Fund and that the proposed multiple-round bidding format would overly-complicate the process and may not allow for full participation.

Furthermore, Commnet suggests that the Commission revise certain aspects of the post-auction procedures to ensure that the funds provided from the Tribal Mobility Fund are not being diverted towards administrative burdens. Lastly, Commnet requests that the Commission adopt an efficient, accurate way to allow carriers to demonstrate compliance with any population-based coverage requirement. The simplicity and certainty engendered in these proposals will ensure that the Tribal Mobility Fund is successful in its ultimate goal: increasing the availability of mobile voice and broadband service on Tribal lands.

Respectfully submitted,

Commnet Wireless, LLC

/s/ Michael Lazarus

By:

Michael Lazarus
Jessica DeSimone
Telecommunications Law Professionals PLLC

875 15th Street, NW
Suite 750
Washington, DC 20005
Telephone: (202) 789-3120
Facsimile: (202) 789-3112

Its Attorneys

May 10, 2013